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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS MANUEL LEPE,

Defendant.

CASE NO. 1:21-CR-00279-ADA-BAM

STIPULATION TO VACATE STATUS
CONFERENCE, SET CHANGE OF PLEA
HEARING, AND EXCLUDE TIME UNDER
SPEEDY TRIAL ACT; FINDINGS AND ORDER

This case is set for a status conference on May 10, 2023. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This, previous, and subsequent General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive open-endedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner*

1 *v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 2 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 3 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 4 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 5 or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 7 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 8 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 9 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 10 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 11 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 12 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 13 and the defendant in a speedy trial.” *Id.*

14 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 15 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 16 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 17 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 18 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 19 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 20 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 21 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 22 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

23 In light of the societal context created by the foregoing, this Court should consider the following
 24 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 25 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
 26 for a change of plea. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial

27
 28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

1 continuance must be “specifically limited in time”).

2 **STIPULATION**

3 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
4 through defendant’s counsel of record, hereby stipulate as follows:

5 1. By previous order, this matter was set for status on May 10, 2023.

6 2. By this stipulation, the parties now move to vacate the status conference, set this the case
7 for a change of plea hearing on July 17, 2023, and to exclude time between May 10, 2023, and July 17,
8 2023, under 18 U.S.C. § 3161(h)(7)(A), B(i) and (iv) [Local Code T4].

9 3. The parties agree and stipulate, and request that the Court find the following:

10 a) The government has represented that the discovery associated with this case
11 includes reports, photographs, criminal history, and records of prior convictions. All of this
12 discovery has been produced directly to counsel and/or made available for inspection.

13 b) Counsel for defendant desires additional time to conduct investigation and
14 research related to the charges, conduct research into any mitigating factors, consult with his
15 client, and to prepare for sentencing

16 c) Counsel for defendant believes that failure to grant the above-requested
17 continuance would deny him the reasonable time necessary for effective preparation, taking into
18 account the exercise of due diligence.

19 d) The government does not object to the continuance.

20 e) Based on the above-stated findings, the ends of justice served by continuing the
21 case as requested outweigh the interest of the public and the defendant in a trial within the
22 original date prescribed by the Speedy Trial Act.

23 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
24 et seq., within which trial must commence, the time period of May 10, 2023 to July 17, 2023,
25 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A) and 3161(h)(7)(B)(i) and
26 (iv) because it results from a continuance granted by the Court at defendant’s request on the basis
27 of the Court’s finding that the ends of justice served by taking such action outweigh the best
28 interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: April 24, 2023

PHILLIP A. TALBERT
United States Attorney

/s/ ANTONIO J. PATACA
 ANTONIO J. PATACA
 Assistant United States Attorney

Dated: April 24, 2023

/s/ DARRYL YOUNG
DARRYL YOUNG
Counsel for Defendant
JESUS MANUEL LEPE

ORDER

IT IS ORDERED that the status hearing set for May 10, 2023, at 1 pm is vacated, and a change of plea hearing is set for **July 17, 2023, at 8:30 a.m. before District Judge Ana de Alba.**

IT IS FURTHER ORDERED THAT the period of time from May 10, 2023, through July 17, 2023, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: April 24, 2023

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE